

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.167 of 2000.

Judgement reserved on: 20.6.2007

Date of decision: 4.7.2007.

Smt. Susheela Chauhan & Ors**Appellants**

Vs.

Ram Saran Sharma & Ors **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting? Yes

For the Appellants : None for appellants No.1 to 5.

**Mr. K.D. Sood, Advocate, for
appellant No.6.**

**For the Respondents : Ms. Sunita Sharma, Advocate, for
respondents No. 1 to 6.**

Kuldeep Singh, Judge.

1. This appeal is directed against the order dated 1.9.1999 passed by learned Motor Accident Claims Tribunal, Shimla in M.A.C.C. No.83-S/2 of 1994, awarding Rs.3,50,000/-compensation along with 12% per annum interest from the date of filing of the petition to the date of payment to the petitioners against all the seven respondents jointly and severally. The appeal has been jointly filed by legal representatives of owner of truck and respondent No.7- Insurer. Ram Parshad driver has not joined the appeal and therefore, he has been impleaded as respondent No.7 in the above

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

appeal . The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that Ram Saran Sharma, Smt. Chintamani, Krishna, Hem Lata, Kanta Devi and Tapsya filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short Act), seeking compensation for the death of Prem Raj, who was the son of petitioners Ram Saran Sharma and Smt. Chintamani , brother of Krishna, Hem Lata, husband of Kanta Devi and father of Tapsya. He was employed as a conductor on truck No,HIS-2122 owned by late Jatinder Singh, now represented by his legal representatives Smt. Sheela Chauhan, Meen, Ambika, Ishwati and Pankaj. Ram Parshad was the driver of the truck. The truck was insured with New India Assurance Company. The truck met with an accident on 25.11.1993 near village Mandhol due to rash and negligent driving of Ram Parshad , driver. Prem Raj suffered injuries including fracture of spinal cord. He remained admitted in Indira Gandhi Medical College, Shimla for about two months. He was referred to PGI Chandigarh where he remained an out-door patient for more than two months. Doctors at PGI told the father of Prem Raj that there was no chance of his survival and that he be taken to his village. Prem Raj was shifted to his village where he died on 18.5.1994. The claimants were dependent upon the deceased for their livelihood. They claimed Rs.4,50,000/- compensation by way of petition.

3. A common reply was filed by the legal representatives of the owner of the truck and the driver of the truck. It has been admitted

that deceased was employed as a conductor in the truck in question, but denied that the deceased used to be paid Rs.1500/- as salary and in addition Rs.40/- per day for food etc. It has been denied that accident took place due to rash and negligent driving of the truck driver. The pleas of limitation, estoppel have also been taken in the reply . The Insurer filed separate reply and took objection that the petition as against Insurance Company is not maintainable because the vehicle was being driven in breach of terms and conditions of the Policy. The driver was not holding valid and effective driving licence. There was no valid registration-cum-fitness certificate of the truck. The deceased was an unauthorized passenger in the truck.

4. The learned Tribunal has held that Prem Raj died due to rash and negligent driving of Ram Parshad driver of truck No.HIS-2122 which belonged to Jatinder Singh predecessor-in-interest of respondents No.1 to 5. The truck was not being driven in violation of the terms and conditions of the Insurance policy and the deceased was not board the vehicle as gratuitous/unauthorized passenger. The Tribunal ultimately awarded a sum of Rs.3,50,000/- compensation along with interest at the rate of 12% per annum as notice above.

5. I have heard the learned counsel for the New India Assurance Company –appellant No.6 and learned counsel for the respondents and have also gone through the record. The appellants No.1 to 5 are legal representatives of the owner of the truck in question, no one appeared on their behalf.

6. The learned counsel for the claimants has taken preliminary objection that joint appeal filed by legal representatives of owner of

the truck and the insurer is not maintainable. It has been submitted that no permission under Section 170 of the Act was taken by the insurer therefore, joint appeal by insurer with the legal representatives of the owner of the truck is not maintainable. She has relied ***R. Manakatti and another vs. M. Subramanian and another [2006 ACJ 862]*** where the Hon'ble Supreme Court has held as follows:-

4. “ *In this appeal preferred by claimants-appellants, it is submitted that the appeal preferred by the insurance company before the High Court was not maintainable and for this reliance is placed on the provisions of section 170 of the Motor Vehicles Act, 1988. In a decision of this court in case of National Insurance Co. Ltd. V. Nicolletta Rohtagi, 2002 ACJ 1950 (SC), this court held :*

(25) We have earlier noticed that motor vehicle accident claim is a tortuous claim directed against tortfeasors who are insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting section 149 of the Act that victims of motor vehicle accidents are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in section 149 (2) of the Act or where the condition precedent specified in section 170 is satisfied.

(26) For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of section 170 of the 1988 Act, where in course of an inquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the

claim, the Tribunal may, for reasons to be recoded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedents embodied in section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation . Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to section 170 of the 1988 Act, the same would go contrary to the scheme and object of the Act.”

5. “In view of the aforesaid principles laid down by this court in the instant case since the owner of the vehicle contested the claim of the appellants, the insurer could not prefer an appeal even if the owner of the vehicle joined him as a party appellant”.

7. The legal representatives of the owner of the truck who are appellants No.1 to 5 are not pursuing the appeal. The appellant No.6 is insurer of the truck. The learned counsel for appellant No.6 has submitted that appeal is maintainable, however, he has not supported his submission by any case law. The law laid by Apex

Court is very clear that such appeal is not maintainable. Therefore in view of ***R. Manakatti*** case supra, the present appeal on behalf of the insurer is not maintainable. The appellants No.1 to 5 legal representatives of owner of truck are not pursuing the appeal, hence appeal deserves to be dismissed and accordingly dismissed. No costs.

No other point was urged.

July 4, 2007
(sks)

(Kuldip Singh)
Judge.